

exclusive applications in a same-day filing group, the Commission may attempt to resolve the mutual exclusivity by facilitating a settlement between the applicants. If a settlement is not reached within a reasonable time, the Commission may designate all applications in the filing group for comparative consideration in a hearing. In this event, the result of the hearing disposes of all of the applications in the filing group.

(iv) *Applications in a window filing group.* Applications in a window filing group are processed in accordance with the procedures for a 30-day notice and cut-off filing group in paragraph (c)(4)(ii) of this section.

(d) *Terminology.* For the purposes of this section, terms have the following meanings:

(1) The “filing date” of an application is the date on which that application was received in a condition acceptable for filing or the date on which the most recently filed major amendment to that application was received, whichever is later, excluding major amendments in the following circumstances:

(i) the major amendment reflects only a change in ownership or control found by the Commission to be in the public interest;

(ii) the major amendment as received is defective or otherwise found unacceptable for filing; or

(iii) the application being amended has been designated for hearing and the Commission or the presiding officer accepts the major amendment.

(2) An “application for initial authorization” is:

(i) any application requesting an authorization for a new system or station;

(ii) any application requesting authorization for an existing station to operate on an additional channel, unless the additional channel is for paired two-way radiotelephone operation, is in the same frequency range as the existing channel(s), and will be operationally integrated with the existing channel(s) such as by trunking;

(iii) any application requesting authorization for a new transmitter at a location more than 2 kilometers (1.2 miles) from any existing transmitters of the applicant licensee on the requested channel or channel block; or

(iv) any application to expand the CGSA of a cellular system (as defined in § 22.911 of this chapter), except during the five-year build-out period.

(3) An "application for modification" is any application other than an application for initial authorization or renewal.

5. Part 22 is amended by revising Section 22.301 to read as follows:

§ 22.301 Station inspection.

Upon reasonable request, the licensee of any station authorized in the Public Mobile Services must make the station and station records available for inspection by authorized representatives of the Commission at any reasonable hour.

6. Section 22.313 is amended by revising paragraph (a)(4), adding a new paragraph (a)(5), and revising paragraph (b) to read as follows:

§ 22.313 Station identification.

(a) ***

(4) Rural subscriber stations using Basic Exchange Telephone Radio Systems in the Rural Radiotelephone Service; or

(5) Nationwide network paging stations operating on 931 MHz channels.

(b) For all other stations in the Public Mobile Services, station identification must be transmitted each hour within five minutes of the hour, or upon completion of the first transmission after the hour. Transmission of station identification may be temporarily delayed to avoid interrupting the continuity of any public communication in progress, provided that station identification is transmitted at the conclusion of that public communication.

(c) Station identification must be transmitted by telephony using the English language or by telegraphy using the international Morse code, and in a form that can be

received using equipment appropriate for the modulation type employed, and understood without the use of unscrambling devices, except that, alternatively, station identification may be transmitted digitally, provided that the licensee provides the Commission with information sufficient to decode the digital transmission to ascertain the call sign. Station identification comprises transmission of the call sign assigned by the Commission to the station, however, the following may be used in lieu of the call sign:

(1) For transmissions from subscriber operated transmitters, the telephone number or other designation assigned by the carrier, provided that a written record of such designations is maintained by the carrier;

(2) For general aviation airborne mobile stations in the Air-Ground Radiotelephone Service, the official FAA registration number of the aircraft;

(3) For stations in the Paging and Radiotelephone Service, a call sign assigned to another station within the same system.

7. Part 22 is amended by revising Section 22.357 to read as follows:

§ 22.357 Emission types.

Any authorized station in the Public Mobile Services may transmit any emission type provided that the resulting emission complies with the appropriate emission mask. See §§ 22.359 and 22.917 of this part.

8. Part 22 is amended by adding a new Section 22.509 to read as follows:

§ 22.509 Procedures for mutually exclusive applications in the Paging and Radiotelephone Service.

Mutually exclusive applications in the Paging and Radiotelephone Service, including those that are mutually exclusive with applications in the Rural Radiotelephone Service, are processed in accordance with § 22.131 of this part and with this section.

(a) Applications in the Paging and Radiotelephone Service may be mutually exclusive with applications in the Rural Radiotelephone Service if they seek authorization to

operate facilities on the same channel in the same area, or the technical proposals are otherwise in conflict. See § 22.567 of this part.

(b) A modification application in either service filed on the earliest filing date may cause all later-filed mutually exclusive applications of any type in either service to be “cut off” (excluded from a same-day filing group) and dismissed, pursuant to § 22.131(c)(3)(ii) and § 22.131(c)(4) of this part.

(c) Competitive bidding will not be used as a selection procedure for any filing group that contains one or more applications for facilities in the Rural Radio Service. If a settlement between the applicants cannot be reached in a reasonable time, the applications may be designated for comparative consideration in a hearing. See § 22.131(c)(4)(ii) of this part.

9. Part 22 is amended by removing Section 22.541.

10. Part 22 is amended by revising Section 22.717 to read as follows:

§ 22.717 Procedure for mutually exclusive applications in the Rural Radiotelephone Service.

Mutually exclusive applications in the Rural Radiotelephone Service, including those that are mutually exclusive with applications in the Paging and Radiotelephone Service, are processed in accordance with § 22.131 of this part and with this section.

(a) Applications in the Rural Radiotelephone Service may be mutually exclusive with applications in the Paging and Radiotelephone Service if they seek authorization to operate facilities on the same channel in the same area, or the technical proposals are otherwise in conflict. See § 22.567 of this part.

(b) A modification application in either service filed on the earliest filing date may cause all later-filed mutually exclusive applications of any type in either service to be “cut off” (excluded from a same-day filing group) and dismissed, pursuant to § 22.131(c)(3)(ii) and § 22.131(c)(4) of this part.

(c) Competitive bidding will not be used as a selection procedure for any filing group that contains one or more applications for facilities in the Rural Radio Service. If a

settlement between the applicants cannot be reached in a reasonable time, the applications may be designated for comparative consideration in a hearing. See § 22.131(c)(4)(ii) of this part.

11. Section 22.949 is amended by revising paragraph (a)(2), adding a NOTE following paragraph (a)(2), revising the introductory text of paragraph (b), and revising paragraphs (b)(2), (c), (d)(1) and (d)(3), to read as follows:

§ 22.949 Unserved area licensing process.

(a) ***

(2) Only one Phase I initial application is granted on each channel block in each market. Consequently, whenever two or more acceptable Phase I initial applications are timely filed in the same market on the same channel block, such Phase I initial applications are mutually exclusive, regardless of any other considerations such as the technical proposals. In order to determine which of such mutually exclusive Phase I initial applications to grant, the Commission administers competitive bidding procedures in accordance with Subpart Q of Part 1 of this chapter. After such procedures, the application of the winning bidder may be granted and the applications excluded by that grant may be dismissed without prejudice.

NOTE: Notwithstanding the provisions of § 22.949(a)(2), mutually exclusive Phase I initial applications that were filed between March 10, 1993 and July 25, 1993, inclusive, are to be included in a random selection process, following which the selected application may be granted and the applications excluded by that grant may be dismissed without prejudice.

(b) *Phase II.* Phase II is an on-going filing process that allows eligible parties to apply for any unserved areas that may remain in a market after the Phase I process is complete.

(2) There is no limit to the number of Phase II applications that may be granted on each channel block in each market. Consequently, Phase II applications are mutually exclusive only if the proposed CGSAs would overlap. Mutually exclusive applications are processed using the general procedures in § 22.131 of this part.

(c) *Settlements among mutually exclusive applicants.* Settlements among some, but not all, applicants with mutually exclusive applications for unserved areas (partial settlements) are prohibited. Settlements among all applicants with mutually exclusive applications (full settlements) are allowed and must be filed no later than fifteen (15) business days before the competitive bidding procedure is scheduled to take place.

(d) ***

(1) The Commission will not accept amendments (of any type) to mutually exclusive Phase I applications prior to the conclusion of the competitive bidding process.

(3) Minor amendments required by § 1.65 of this chapter must be filed no later than thirty (30) days after public notice announcing the results of the competitive bidding process.

Part 24 - PERSONAL COMMUNICATIONS SERVICES

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 47 U.S.C. §§ 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. The following sections of Part 24 are amended by removing the term “FCC Form 401” and adding, in its place, the term “FCC Form 600”:

- (a) 24.307;
- (b) 24.406;

- (c) 24.409;
- (d) 24.413;
- (e) 24.426;
- (f) 24.427;
- (g) 24.707;
- (h) 24.806;
- (i) 24.809;
- (j) 24.813;
- (k) 24.826; and
- (l) 24.827.

Part 90 - PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. The Table of Contents for Part 90 is revised by adding new text and listings in Subpart G to read as follows:

Subpart G - Applications and authorizations

Special Rules Governing Facilities Used To Provide Commercial Mobile Radio Services

- § 90.160 Public Notice.
- § 90.161 Amendment or dismissal of applications.
- § 90.162 Agreements to dismiss applications, amendments, or pleadings.
- § 90.163 Petitions to deny, responsive pleadings.
- § 90.164 Classification of filings as major or minor.
- § 90.165 Procedures for mutually exclusive applications.
- § 90.166 Grants of applications.
- § 90.167 Time in which a station must commence service.

§ 90.168 Equal employment opportunities.

§ 90.169 Construction prior to grant of application.

3. Section 90.5 is amended by adding a new paragraph (h) and redesignating the remaining paragraphs accordingly:

§ 90.5 Other applicable rule parts.

(h) Part 20 contains rules relating to commercial mobile radio services.

4. Section 90.75 is amended by revising paragraph (a) and the third sentence of paragraph (c)(10) to read as follows:

§ 90.75 Business Radio Service.

(a) *Eligibility.* Persons primarily engaged in any of the following activities are eligible to hold authorizations in the Business Radio Service to provide commercial mobile radio service as defined in Part 20 or to operate stations for transmission of communications necessary to such activities of the licensee:

(c) * * *

(10) * * * Licensees may provide one-way paging communications on this frequency to individuals, persons eligible for licensing under subpart B, C, D, or E of this part, to representatives of Federal Government agencies, and foreign governments and their representatives.

5. Section 90.115 is amended to read as follows:

§ 90.115 Foreign government and alien eligibility.

(a) No station authorization in the radio services governed by this part shall be granted to or held by a foreign government or its representative.

(b) No station authorization in the radio services governed by this part shall be granted to or held by any entity providing or seeking to provide commercial mobile radio services (except such entities meeting the requirements of § 20.9(c) of this chapter) if such entity is:

- (1) an alien or the representative of any alien;
- (2) a corporation organized under the laws of any foreign government;
- (3) a corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country;
- (4) a corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

6. Section 90.119 is amended to read as follows:

§ 90.119 Application forms.

The following application forms shall be used--

- (a) Form 600 shall be used to apply:

- (1) For new base, fixed, or mobile station authorizations governed by this part.
- (2) For system authorizations, where the system meets the requirements of § 90.117.
 - (i) Application for a radio system may be submitted on a single Form 600.
 - (ii) If the control station(s) will operate on the same frequency as the mobile station, and if the height of the control station(s) antenna(s) will not exceed 6.1 meters (20 feet) above ground or an existing man-made structure (other than an antenna structure), there is no limit on the number of such stations which may be authorized. Appropriate items on Form 600 shall be completed showing the frequency, the station class, the total number of control stations, the emission, and the output power of the highest powered control station. Applicants for all control stations in the 470-512 MHz band must furnish the information requested in the relevant items in Form 600.
- (3) For modification or for modification and renewal of an existing authorization. See § 90.135.
- (4) For the Commission's consent to the assignment of an authorization to another person or entity, except for authorization to provide commercial mobile radio service. In addition, the application shall be accompanied by a letter from the assignor setting forth his or her desire to assign all right, title, and interest in and to such authorization, stating the call sign and location of the station, and stating that the assignor will submit his or her current station authorization for cancellation upon completion of the assignment. Form 1046 may be used in lieu of this letter.
- (5) For reinstatement of an expired license. See also paragraphs (b)(1) and (e) of this section.
 - (b) Form 405-A shall be used to:
 - (1) Apply for license reinstatement or renewal if the reinstatement or renewal does not involve the modification of the station or system license.
 - (2) Notify the Commission of a change in the licensee's name or mailing address that occurs during the license term. See § 90.135(b).
 - (3) Notify the Commission that the licensee has discontinued station operation and

wishes to cancel the license. See § 90.157.

(c) Form 490 shall be used whenever it is proposed that a licensee for a commercial mobile radio service in this Part change, as by transfer of stock ownership, the control of a corporate licensee or for the Commission's consent to an assignment of an authorization to another person or entity.

(d) Form 572, Temporary Permit to Operate a Part 90 Radio Station, should be properly executed if the applicant is eligible and desires to operate his or her station pending the processing of his or her formal application. See also §§ 90.159, and 90.657.

(e) Form 574-R shall be used to apply for renewal of an existing authorization and may be used to apply for reinstatement of an expired license, if the renewal or reinstatement does not involve the modification of the station or system license. (Form 574-R is generated by the Commission and mailed to the licensee prior to the expiration of the license term.)

7. Section 90.131 is amended by inserting introductory text before paragraph (a) to read as follows:

90.131 Amendment or dismissal of applications.

This rule governs all applications relating to radio services in this part, including applications filed by entities meeting the requirements of § 20.9(c) of this chapter, except applications concerning facilities used to provide commercial mobile radio services, which are governed by § 90.161.

8. Section 90.135 is amended by revising paragraph (c) as follows:

§ 90.135 Modification of license.

(c) Unless specifically exempted in § 90.175, requests for modifications listed in

paragraph (a) of this section must be submitted on Form 600 to the applicable frequency coordinator.

9. Section 90.145 is amended by revising the first sentence of paragraph (c) and adding paragraphs (d) and (e) as follows:

§ 90.145 Special temporary authority.

(c) Requests for special temporary authority to operate as a private mobile radio service provider for periods exceeding 180 days require evidence of frequency coordination. ***

(d) A request for special temporary authority to operate a commercial mobile radio facility under this part may be granted without being listed in a Public Notice, or prior to thirty (30) days after such listing, if:

(1) The STA is to be valid for thirty (30) days or less and the applicant does not plan to file an application for regular authorization of the subject operation;

(2) The STA is to be valid for sixty (60) days or less, pending the filing of an application for regular authorization of the subject operation;

(3) The STA is to allow interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized; or

(4) The STA is made upon a finding that there are extraordinary circumstances requiring operation in the public interest and that delay in the institution of such service would seriously prejudice the public interest.

(e) The Commission may grant STAs to operate a commercial mobile radio facility for a period not to exceed one hundred eighty (180) days under the provisions of Section 309(f) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(f), if extraordinary circumstances so require, and pending the filing of an application for regular operation. The Commission may grant extensions for an additional period of

up to one hundred eighty (180) days, but the applicant must show that extraordinary circumstances warrant such an extension.

10. Section 90.149 is amended by revising paragraph (a) to read as follows:

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five (5) years from the date of the original issuance, modification, or renewal, except that the license term for stations licensed as commercial mobile radio service on 220-222 MHz, 929-930 MHz paging, Business Radio, and SMR frequencies shall be ten (10) years. Licensees shall have an additional thirty (30) days after the expiration of the license term to apply for reinstatement of expired licenses.

11. Section 90.153 is amended by adding the following at the conclusion of the last sentence:

§ 90.153 Transfer or assignment of station authorization.

* * * The assignee is responsible for ascertaining that the station facilities are and will remain in compliance with the terms and conditions of the authorization to be assigned.

(a) *Application required.* The assignor or transferor of a commercial mobile radio license under this part must file an application for approval of assignment or transfer of control (Commission Form 490). In the case of involuntary assignment, such application must be filed no later than thirty (30) days after the event causing the assignment. The assignee or transferee must file a report qualifying it as a commercial mobile radio provider (Commission Form 430) unless a current report is already on file with the Commission.

(b) *Notification of completion.* Assignments and transfers of control of commercial mobile radio licenses must be completed within sixty (60) days of Commission approval. The assignee or transferee must notify the Commission by letter of the date of completion of the assignment or transfer of control. If an assignment or transfer of

control is not completed within this time, the assignor or transferor must so notify the Commission by letter, and the assignee or transferee must submit the authorization(s) to the Commission for cancellation or request an extension of time to complete the assignment or transfer of control. If the assignment or transfer of control is not completed, the authorization(s) remain with the assignor or transferor.

(c) **Partial assignment of authorization.** If the authorization for some, but not all, of the facilities of a commercial mobile radio station is assigned to another party, voluntarily or involuntarily, such action is a partial assignment of authorization.

(1) To request Commission approval of a partial assignment of authorization, the following must be filed in addition to the forms required by paragraph (a) of this section:

(i) The assignor must notify the Commission (Commission Form 489) of the facilities to be deleted from its authorization upon completion of the assignment.

(ii) The assignee must apply for authority (Commission Form 600) to operate a new station including the facilities for which authorization is assigned, or to modify the assignee's existing station to include the facilities for which authorization was assigned.

(2) Partial assignments must be completed within sixty (60) days of Commission approval. If an approved partial assignment is not completed within this time, the assignor must notify the Commission (Commission Form 489), and the assignee must submit the authorization(s) to the Commission for cancellation or request an extension of time to complete the assignment. If the assignment is not completed, the authorization(s) remain with the assignor.

(d) **Limitations.** The Commission may deny applications for assignment of authorization or consent to transfer of control of a commercial mobile radio license if:

(1) The Commission is unable to make the public interest determinations required under the Communications Act with respect to both parties to the assignment or transfer; or

(2) The authorization was obtained for the principal purpose of speculation or profitable resale, rather than provision of commercial mobile radio services to the public.

12. Section 90.155 is amended by revising paragraph (a) to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except stations authorized in the 220-222 MHz, 929-930 MHz paging, Business Radio, and SMR services, and except as provided in paragraph (b) of this section and in §§ 90.629 and 90.631(f), must be placed in operation within eight (8) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. For stations authorized to 220-222 MHz, 929-930 MHz paging, Business Radio, and SMR licensees, see § 90.167.

13. Section 90.159 is amended by revising the first sentence in paragraphs (a), (b), and (c) to read as follows:

§ 90.159 Temporary and conditional permits.

(a) An applicant for a license under this part (other than a commercial mobile radio license) utilizing an already licensed facility may operate the radio station(s) for a period of up to one hundred eighty (180) days under a temporary permit evidenced by a properly executed temporary license certificate (Form 572) after submitting or filing a formal application for station license in accordance with § 90.127, provided that all the antennas employed by control stations are 6.1 meters (20 feet) or less above ground or 6.1 meters (20 feet) or less above a man-made structure other than an antenna tower to which it is affixed. * * *

(b) An applicant proposing to operate a new land mobile station or modify an existing station below 470 MHz or in the one-way paging 929-930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) that is required to submit a frequency recommendation pursuant to paragraphs (a) through (e) of § 90.175 may operate the proposed station during the pendency of its application for a period of up to one hundred eighty (180) days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127 if the application is accompanied by evidence of frequency coordination in accordance with §§ 90.175 and 90.176, and provided that the following conditions are satisfied: * * *

(c) An applicant proposing to operate an itinerant station or an applicant seeking the assignment of authorization or transfer of control of a license for an existing station below 470 MHz or in the 929-930 MHz band (other than a commercial mobile radio service applicant or licensee on these bands) may operate the proposed station during the pendency of the application for a period not to exceed one hundred eighty (180) days under a conditional permit upon the filing of a properly completed formal application that complies with § 90.127. * * *

14. Part 90 is amended by adding text after section 90.159 to read as follows:

**SPECIAL RULES GOVERNING
FACILITIES USED TO PROVIDE
COMMERCIAL MOBILE RADIO SERVICES**

NOTE: The following rules (§ 90.160 through § 90.169) govern applications, licensing, and operation of radio facilities in the 220-222 MHz (Subpart T), Business Radio (Subpart D), 929-930 MHz Paging (Subpart P), and Specialized Mobile Radio (Subpart S) services that are used to provide commercial mobile radio services (see §§ 20.3 and 20.9). The rules relating to applications and licensing of facilities on paging-only channels in the Business Radio Service (see § 90.75(c)(10)) and 929-930 MHz paging channels (see § 90.494(a),(b)) are not effective prior to August 10, 1996. Section 90.168 is also not effective prior to August 10, 1996 for reclassified commercial mobile radio service providers who are to be regulated as private carriers until August 10, 1996 as provided in the Second Report and Order in GN Docket No. 93-252, 9 FCC Rcd 2348 (1994), paras. 280-284. In the case of any conflict between rules set forth in §§ 90.160 through 90.169 and other rules in this part, §§ 90.160 through 90.169 apply.

15. Part 90 is amended by adding a new Section 90.160 to read as follows:

§ 90.160 Public Notice

(a) Periodically, the Commission will issue Public Notices listing major filings and other information of public significance concerning commercial mobile radio services licensed under this part. Categories of Public Notice listings are as follows:

(1) *Accepted for filing.* Acceptance for filing of all applications and major amendments thereto.

(2) *Actions.* Commission actions on pending applications previously listed as accepted for filing.

(3) *Informative listings.* Information that the Commission, in its discretion, believes to be of public significance. Such listings do not create any rights to file oppositions or other pleadings.

16. Part 90 is amended by adding a new Section 90.161 to read as follows:

§ 90.161 Amendment or dismissal of applications

(a) *Amendment.* Pending applications concerning facilities for providing commercial mobile radio services may be amended as a matter of right if such applications have not been designated for hearing or listed in a Public Notice for a random selection or competitive bidding process, except as provided in subparagraphs (1) and (2) of this paragraph. If a petition to deny or other formal objection has been filed, a copy of any amendment (or other filing) must be served on the petitioner. If the Commission has issued a Public Notice stating that the application appears to be mutually exclusive with another application (or applications), a copy of any amendment (or other filing) must be served on any such mutually exclusive applicant (or applicants).

(1) Amendments to applications that resolve mutual exclusivity may be filed at any time, subject to the requirements of § 90.162.

(2) Amendments to applications designated for hearing may be allowed by the presiding officer and amendments to applications selected in a random selection process may be allowed by the Commission for good cause shown. In such instances, a written petition demonstrating good cause must be submitted and served upon the parties of record.

(b) *Dismissal.* The Commission may dismiss any application for authorization, assignment of authorization, or consent to transfer of control of a commercial mobile radio facility (i) upon request by the applicant; (ii) if the application is untimely filed; (iii) if the application is mutually exclusive with another application that is selected or granted in accordance with the rules in this part; (iv) for failure to prosecute; (v) if the

requested spectrum is not available; or (vi) if the application is found to be defective. Such dismissal may be “without prejudice,” meaning that the Commission may accept from the applicant another application for the same purpose at any later time, or “with prejudice,” meaning that the Commission will not accept from the applicant another application for the same purpose for a period of one year following the date of the dismissal action taken by the Commission. Unless otherwise provided in this part, a dismissed application will not be returned to the applicant.

(1) *Dismissal at request of applicant.* Any applicant may request that its application be returned or dismissed. A request for the return of an application after it has been listed on Public Notice as tentatively accepted for filing is considered to be a request for dismissal of that application without prejudice.

(i) If the applicant requests dismissal of its application with prejudice, the Commission will dismiss the application with prejudice.

(ii) If the applicant requests dismissal of its application without prejudice, the Commission will dismiss that application without prejudice, unless (A) the application has been designated for comparative hearing; (B) it has been selected in a random selection process; or (C) it is an application for which the applicant submitted the winning bid in a competitive bidding process. If the applicant requests dismissal of its application for which it submitted the winning bid in a competitive bidding process, the Commission will dismiss that application with prejudice. If the applicant requests dismissal of its application after that application has been designated for comparative hearing or selected in a random selection process, it may submit a written petition requesting that the dismissal be without prejudice. Such petition must demonstrate good cause, comply with § 90.162 of this part, and be served upon all parties of record. The Commission may grant such petition and dismiss the application without prejudice or deny the petition and dismiss the application with prejudice.

(2) *Dismissal of mutually exclusive applications not granted.* The Commission may dismiss any mutually exclusive application:

(i) For which the applicant did not submit the winning bid in a competitive bidding process;

(ii) That is included in a random selection process but is not granted; or

(iii) That receives comparative consideration in a hearing but is not granted by

order of the presiding officer.

(3) *Dismissal for failure to prosecute.* The Commission may dismiss applications for failure of the applicant to prosecute or for failure of the applicant to respond substantially within a specified time period to official correspondence or requests for additional information. Such dismissal will generally be without prejudice if the failure to prosecute or respond occurred prior to designation of the application for comparative hearing or prior to selection of the application in a random selection process, but may be with prejudice in cases of non-compliance with § 90.162. Dismissal will generally be with prejudice if the failure to prosecute or respond occurred after designation of the application for comparative hearing or after selection of the application in a random selection process. The Commission may dismiss applications with prejudice for failure of the applicant to comply with requirements related to a competitive bidding process.

(4) *Dismissal as defective.* The Commission may dismiss without prejudice applications that it finds to be defective. An application for authorization or assignment of authorization is defective if:

(i) It is unsigned or incomplete with respect to required answers to questions, informational showings, or other matters of a formal character; or

(ii) It requests an authorization that would not comply with the Commission's Rules and does not contain a request for waiver of these rule(s), or in the event that the Commission denies such a waiver request, does not contain an alternative proposal that fully complies with the rules.

(5) *Dismissal because spectrum not available.* The Commission may dismiss any application that requests spectrum which is unavailable because:

(i) It was previously assigned to another licensee on an exclusive basis or cannot be assigned to the applicant without causing interference; or

(ii) Reasonable efforts have been made to coordinate the proposed facility with foreign administrations under applicable international agreements, and an unfavorable response (harmful interference anticipated) has been received.

(6) *Dismissal as untimely.* The Commission may dismiss without prejudice any application that is prematurely or late filed, including any application filed prior to the

opening date or after the closing date of a filing window, or after the cut-off date for a mutually exclusive application filing group.

17. Part 90 is amended by adding a new Section 90.162 to read as follows:

§ 90.162 Agreements to dismiss applications, amendments, or pleadings

(a) Parties that have filed an application concerning facilities used to provide commercial mobile radio services that is mutually exclusive with one or more other applications, and then enter into an agreement to resolve the mutual exclusivity by withdrawing or requesting dismissal of the application or an amendment thereto, must obtain the approval of the Commission. Parties that have filed or threatened to file a petition to deny, informal objection, or other pleading against a pending application, and then seek to withdraw or request dismissal of, or refrain from filing, the petition, either unilaterally or in exchange for a financial consideration, must obtain the approval of the Commission.

(b) The party withdrawing or requesting dismissal of its application, petition to deny, informal objection, or other pleading, or refraining from filing a pleading, must submit to the Commission a request for approval of the withdrawal or dismissal, a copy of any written agreement related to the withdrawal or dismissal, and an affidavit setting forth:

(1) A certification that neither the party nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses incurred in preparing and prosecuting the application, petition to deny, informal objection, or other pleading in exchange for the withdrawal or dismissal of the application, petition to deny, informal objection, or other pleading, or threat to file a pleading, except that this provision does not apply to dismissal or withdrawal of applications pursuant to bona fide merger agreements;

(2) The exact nature and amount of any consideration received or promised;

(3) An itemized accounting of the expenses for which it seeks reimbursement; and

(4) The terms of any oral agreement related to the withdrawal or dismissal of the application, petition to deny, informal objection, or other pleading or threat to file a pleading.

(c) In addition, within five (5) days of the filing date of the applicant's or petitioner's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(1) A certification that neither the applicant nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the petitioner in exchange for withdrawing or dismissing the application, petition to deny, informal objection, or other pleading; and

(2) The terms of any oral agreement relating to the withdrawal or dismissal of the application, petition to deny, informal objection, or other pleading.

(d) No person shall make or receive any payments in exchange for withdrawing a threat to file or refraining from filing a petition against an application. For purposes of this section, reimbursement by an applicant of the legitimate and prudent expenses of a potential petitioner or objector, incurred reasonably and directly in preparing to file a petition to deny, will not be considered to be payment for refraining from filing a petition to deny or an informal objection. Payments made directly to a potential petitioner or objector, or a person related to a potential petitioner or objector, to implement non-financial promises are prohibited unless specifically approved by the Commission.

(e) For the purposes of this section:

(1) Affidavits filed pursuant to this section must be executed by the filing party, if an individual, a partner having personal knowledge of the facts, if a partnership, or an officer having personal knowledge of the facts, if a corporation or association.

(2) Applications, petitions to deny, informal objections, and other pleadings are deemed to be pending before the Commission from the time the application or petition to deny is filed with the Commission until such time as an order of the Commission granting, denying, or dismissing the application, petition to deny, informal objection, or other pleading is no longer subject to reconsideration by the Commission or to review by any court.

(3) "Legitimate and prudent expenses" are those expenses reasonably incurred by a party in preparing to file, filing, prosecuting and/or settling its application, petition to deny, informal objection, or other pleading for which reimbursement is sought.

(4) "Other consideration" consists of financial concessions, including, but not limited to, the transfer of assets or the provision of tangible pecuniary benefit, as well as non-financial concessions that confer any type of benefit on the recipient.

18. Part 90 is amended by adding a new Section 90.163 to read as follows:

§ 90.163 Petitions to deny, responsive pleadings.

Petitions to deny any major filing concerning facilities used to provide commercial mobile radio services may be filed by parties able to demonstrate standing to file such petitions. Responsive pleadings to such petitions may be filed in accordance with the provisions of this section.

(a) *Content and requirements.* Petitions to deny and responsive pleadings must:

(1) Clearly identify the pertinent major filing(s);

(2) Comply with all applicable requirements of §§ 1.41 through 1.52 of this chapter;

(3) Contain specific allegations of fact which, except for facts of which official notice may be taken, are supported by affidavit of a person or persons with personal knowledge thereof, and which are sufficient to demonstrate that the petitioner (or respondent) is a party in interest and that a grant or other Commission action regarding the major filing would be inconsistent with the public interest;

(4) Be filed within 30 days after the date of the Public Notice listing the major filing; and

(5) Contain a certificate of service showing that a copy has been mailed to the applicant no later than the date of filing with the Commission.

(b) *Expansion.* Petitions to deny a major amendment to an application may raise only matters directly related to the major amendment that could not have been raised in connection with the application as originally filed. This paragraph does not apply to petitioners who gain standing because of the major amendment.

(c) *Dismissal.* The Commission may, by letter, dismiss any petition to deny a major

filing if the petition does not comply with the requirements of this section or § 90.161. The reason(s) for the dismissal must be stated in the letter. When a petition to deny is dismissed, any related responsive pleadings also are dismissed.

19. Part 90 is amended by adding a new Section 90.164 to read as follows:

§ 90.164 Classification of filings as major or minor.

Applications and amendments to applications are classified as major or minor when such filings concern facilities used to provide commercial mobile radio services. Categories of major and minor filings are listed in § 309 of the Communications Act of 1934, as amended (47 U.S.C. § 309). In general, a major filing is a request for a Commission action that has the potential to affect parties other than the applicant. The following are major filings:

- (a) *Initial Station Authorization.* Filings for an initial authorization as defined in § 90.165(d)(2) are major.
- (b) *Ownership or control change.* Filings are major if they specify a substantial change in beneficial ownership or control (de jure or de facto), unless such change is involuntary or if the filing merely amends an application to reflect a change in ownership or control that has already been approved by the Commission.
- (c) *Renewal.* Applications for renewal of authorizations are major.
- (d) *Environmental.* Filings are major if they request authorization for a facility that would have a significant environmental effect, as defined by §§ 1.1301 et seq. of this chapter.
- (e) In the Specialized Mobile Radio Service, in addition to filings listed in paragraphs (a)-(d) of this section, filings are major if they:
 - (1) Request a change in frequency;
 - (2) Request an authorization that would increase the effective radiated power or antenna height above average terrain in any azimuth from an existing transmitter authorized to the filer;

- (3) Request an authorization that would relocate an existing fixed transmitter;
- (4) Amend a pending application to change a requested frequency;
- (5) Amend a pending application in a way that would increase the proposed effective radiated power or antenna height above average terrain in any azimuth from an existing transmitter authorized to the filer;
- (6) Amend a pending application to change the location of a fixed transmitter from that previously proposed in the application; or
- (7) Amend a pending application for which pre-filing coordination was required to change the technical proposal substantially from that which was coordinated with other users.

20. Part 90 is amended by adding a new Section 90.165 to read as follows:

§ 90.165 Procedures for mutually exclusive applications.

Mutually exclusive commercial mobile radio service applications are processed in accordance with the rules in this section, except for mutually exclusive applications for licenses in the 220-220 MHz service and the 929-930 MHz Paging service, which are processed in accordance with the rules in subpart T and subpart P of this part.

Two or more pending applications are mutually exclusive if the grant of one application would effectively preclude the grant of one or more of the others under Commission rules governing the services involved.

(a) *Separate applications.* Any applicant that files an application knowing that it will be mutually exclusive with one or more applications should not include in the mutually exclusive application a request for other channels or facilities that would not, by themselves, render the application mutually exclusive with those other applications. Instead, the request for such other channels or facilities should be filed in a separate application.

(b) *Filing groups.* Pending mutually exclusive applications are processed in filing groups. Mutually exclusive applications in a filing group are given concurrent consideration. The Commission may dismiss as defective (pursuant to § 90.162 of this

part) any mutually exclusive application(s) whose filing date is outside of the date range for inclusion in the filing group. The types of filing groups used in day-to-day application processing are specified in paragraph (c)(3) of this section. A filing group is one of the following types:

(1) *Renewal filing group.* A renewal filing group comprises a timely-filed application for renewal of an authorization and all timely-filed mutually exclusive competing applications.

(2) *Same-day filing group.* A same-day filing group comprises all mutually exclusive applications whose filing date is the same day, which is normally the filing date of the first-filed application(s).

(3) *Thirty-day notice and cut-off filing group.* A 30-day notice and cut-off filing group comprises mutually exclusive applications whose filing date is no later than thirty (30) days after the date of the Public Notice listing the first-filed application(s) (according to the filing dates) as acceptable for filing.

(4) *Window filing group.* A window filing group comprises mutually exclusive applications whose filing date is within an announced filing window. An announced filing window is a period of time between and including two specific dates, which are the first and last dates on which applications (or amendments) for a particular purpose may be accepted for filing. In the case of a one-day filing window, the two dates are the same. The dates are made known to the public in advance.

(c) *Procedures.* Generally, the Commission may grant one application in a filing group of mutually exclusive applications and dismiss the other application(s) in the filing group that are excluded by that grant, pursuant to § 90.162 of this part.

(1) *Selection methods.* In selecting the application to grant, the Commission may use competitive bidding, random selection, or comparative hearings, depending on the type of applications involved.

(2) *Dismissal of applications.* The Commission may dismiss any application in a filing group that is defective or otherwise subject to dismissal under § 90.162 of this part, either before or after employing selection procedures.

(3) *Type of filing group used.* Except as otherwise provided in this part, the type of filing group used in processing of two or more mutually exclusive applications